

## **REVIEW OF TECHNICAL DISPUTES ARISING IN REMEDIATION AND LANDFILL CLOSURE**

From time to time parties subject to remediation or landfill closure requirements (collectively, “Remediating Parties”) disagree with case managers or project managers and related involved personnel within the Site Remediation or the Solid and Hazardous Waste Programs (collectively, “Oversight Staff Members”) respecting the proper application of closure or remediation requirements at particular sites (collectively, “Technical Disputes”). In the past, there has been no generally applicable process for resolving Technical Disputes. This may have resulted in delay and a lack of consistency and certainty, which may have detracted from Departmental goals of transparent and efficient site remediation and landfill closure processes.

This Policy establishes a generally applicable process for resolving Technical Disputes (the “Technical Review Process”). As in the past, all reasonable attempts should be made to resolve Technical Disputes through discussions between Remediating Parties and Oversight Staff Members. Following the Effective Date set forth below, all Technical Disputes arising within the Site Remediation Program (“SRP”) and the Division of Solid and Hazardous Waste (“S&HW”) that cannot be resolved through discussions between Remediating Parties and Oversight Staff Members shall be resolved for these Programs through the process set forth below.

Please note that the Department is extending this Technical Review Process to affected parties as a matter of discretion to expedite and improve governmental decisionmaking. The establishment of this Technical Review Process shall not be construed to give rise to legal or equitable rights or remedies beyond those afforded under current law.

### **I. Step 1: Elevation of Dispute Through Chain of Command**

1. If a Remediating Party and Oversight Staff Member cannot timely resolve a Technical Dispute, the Remediating Party may elevate the Technical Dispute to the Oversight Staff Member’s immediate supervisor for resolution. If this supervisor determines that the Technical Dispute involves an issue of law or policy, the supervisor shall inform the Remediating Party that it must proceed immediately to Step 2 below.
2. If the Technical Dispute cannot be resolved by the supervisor, the Remediating Party may elevate the Technical Dispute to the Chief of the relevant Bureau. If the Bureau Chief determines that the Technical Dispute involves an issue of law or policy, the Bureau Chief shall inform the Remediating Party that it must proceed immediately to Step 2 below.

### **II. Step 2: Convening of Technical Review Panel**

If the Technical Dispute cannot be resolved through Step 1 above, the Remediating Party may request a Technical Review Panel under the procedure set forth below.

#### **A. Request must be in Writing**

The Remediating Party shall submit a request (“Technical Review Request”) in writing that a Technical Review Panel be convened. For Technical Disputes related to S&HW the Technical Review Request shall be submitted to the Director of S&HW. For

Technical Disputes related to SRP the Technical Review Request shall be submitted to the Director of the Division of Remedial Management and Response. The Technical Review Request shall include the following:

1. A brief written statement outlining the issue(s) underlying the Technical Dispute.
2. A brief written statement respecting efforts to resolve the Technical Dispute through discussions with Oversight Staff Members and through Step 1 above.
3. A statement of any SRP- or S&HW-imposed deadlines or schedules implicated by the Technical Dispute that the Remediating Party requests to be stayed pending a decision of the Technical Review Panel and the reasons for this request.
4. If the Remediating Party believes that the Technical Dispute involves issues of law or policy, or involves issues implicating another Division within the Site Remediation and Solid and Hazardous Waste Program, these issues shall be explicitly identified in the Technical Review Request. In such case, the Remediating Party may suggest members of the Technical Review Panel appropriate for addressing such issues.
5. If the Remediating Party has been informed through Step 1 by a supervisor or Bureau Chief that the Technical Dispute involves issues of law or policy, this shall be stated in the Technical Review Request.
6. The Remediating Party may request a meeting with the Technical Review Panel in the Technical Review Request. All meeting requests must include three dates and times when the Remediating Party would be available for such a meeting. The determination of whether a meeting will be held or whether the Technical Dispute will be decided on the basis of written submissions will be made by the Director receiving the Technical Review Request.

#### **B. Review and Approval of Technical Review Request**

The Director receiving a Technical Review Request, in consultation as necessary with other Site Remediation or Solid and Hazardous Waste personnel, shall review each Request to determine if the subject relates to the technical requirements for site remediation or landfill closure at a particular site and is therefore appropriate for review by a Technical Review Panel. Examples of issues that are not appropriate for review by a Technical Review Panel include, but are not limited to, challenges to enforcement actions, including natural resource damage assessments or penalty assessments, or general policy issues not related to a particular site. A Technical Review Request will also be rejected if the Remediating Party made insufficient efforts to resolve the Technical Dispute with Oversight Staff Members, or if the Remediating Party failed to complete Step 1 above.

If the Director determines that the subject of a Technical Review Request is not appropriate for review by a Technical Review Panel, he or she shall immediately transmit a Notice of Rejection of Technical Review Request to the submitting Remediating Party in writing.

If the Director determines that the subject of the Technical Review Request is appropriate for review by a Technical Review Panel, he or she shall immediately transmit a Notice Granting Technical Review to the submitting Remediating Party.

### **C. Effect of Approval of Technical Review Request on Existing Deadlines and Schedules**

The Director's transmission of a Notice Granting Technical Review to the Remediating Party shall stay only SRP- or DS&HW-imposed deadlines or schedules relating to the subject of the Technical Dispute until the date that the Technical Review Panel transmits its determination respecting the Technical Dispute to the Remediating Party, subject to the following exceptions:

1. Irrespective of the pendency of a Technical Dispute, DEP may, at any time, require the Remediating Party to take any measures necessary for the protection of public health, safety or the environment.
2. No deadlines or schedules expiring prior to the Remediating Party's submission of a Technical Review Request shall be stayed.

### **D. Members of Technical Review Panel**

Upon approval of a Technical Review Request, the Director shall determine the members of the Panel, and shall transmit to them a copy of the Technical Review Request. Membership on Technical Review Panels shall be determined as follows:

1. All Technical Review Panels reviewing Technical Disputes arising in the Site Remediation Program shall include the Assistant Directors of the Remedial Management and Response Division.
2. All Technical Review Panels reviewing Technical Disputes arising in the Division of Solid and Hazardous Waste shall include the Director and the Assistant Directors in the Division of Solid and Hazardous Waste.
3. The Director shall consider any suggestions for additional Technical Review Panel members contained in the Technical Review Request, or may otherwise determine that additional members should be included. Depending on the circumstances, additional members could include the Director of the Division of Remedial Support, the Director of the Division of Remedial Management and Response, the Assistant Commissioner of Site Remediation and Solid and Hazardous Waste, the Assistant Commissioner of Natural and Historic Resources, the Administrator or Bureau Chief of the Office of Brownfields Reuse and others.

### **E. Notice of Convening of Technical Review Panel**

Within five days of the granting of a Request for Technical Review, the Director shall transmit to the submitting Remediating Party, in writing, a Notice of Convening of Technical Review Panel. This Notice shall set forth the membership of the Technical Review Panel and a statement of the Technical Dispute to be considered, and shall specify any deadlines or schedules stayed pending a decision by the Technical Review Panel. The Notice shall further state whether a meeting will be scheduled between the submitting Remediating Party and the Technical Review Panel. In the event a meeting is held, efforts will be made to accommodate any dates and times proposed by the submitting Remediating Party. If these dates and times cannot be accommodated, the Remediating Party shall make itself available at the date and time established by the Director.

#### **F. Decision of the Technical Review Panel**

The Technical Review Panel will discuss the Technical Dispute and conduct any research it deems appropriate, and shall discuss the issues with the Remediating Party in cases where a meeting is held. The determination of the Technical Review Panel resolving the Technical Dispute will be transmitted to the submitting Remediating Party in writing. SRP/S&HW shall retain copies of all determinations of Technical Review Panels to ensure consistency in future Technical Disputes.